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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,774	12/18/2001	Lionel Vedrine	64,149-125	6674

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EXAMINER

NGUYEN, DINH Q

ART UNIT PAPER NUMBER

3752

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/023,774

Applicant(s)

VEDRINE ET AL.

Examiner

Dinh Q. Nguyen

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 3-27, 29-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,28,34 and 35 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Claims 1-6, 8, 10-15, and 29 were elected by Applicant, and claims 7, 9, 16-28, 30-33 were withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, the election was made **without** traverse in Paper No. 7 dated 2/23/04. However, claims 3-6, 10-15 are related to a third stopper, which is of Species II (figures 4-11). Furthermore, claims 4-6, 9-15 are depend on claim 3, wherein claim 3 reciting of a third stopper, which is of Species II (figure 3-11). Therefore, Claims 3-7 9-28, and 30-33 are withdrawn from further consideration. However, on the Amendment filed on 8/12/04, claims 3-27, 29-33 were withdrawn, and claims 34, and 35 were added. Therefore, claims 1, 2, 28, 34 and 35 are pending on this application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Willis et al.

The statement of intended use carries no patentable weight.

Willis et al. discloses a spraying device comprising a tubular body 1/2/3 including an internal surface and first and second open ends, first 9b and second 9a stoppers, a fluid 15 between the first and second stoppers, a bypass 12 between the second stopper 9a and the second end, a spray nozzle 13, and a cap 13a with air vent (column 6, lines 57-60).

With respect to claim 28, the apparatus shown by Willis et al. is capable of performing the method or steps recited in the claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 28, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ennis, III in view of Willis et al.

The statement of intended use carries no patentable weight.

Ennis teaches all the limitations of the claims except for a second stopper and a bypass valve. However, Willis discloses a spraying device with a second stopper 9a and a bypass valve 12. Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Ennis with a second stopper and a bypass valve as suggested by Willis. Doing so would provide a sprayer with a way for mixing two separated components.

With respect to claim 34 and 35, Willis discloses a non-medicinal substance between the nozzle end and the second stopper 9a but does not teach a non-medicinal substance between the first stopper and the second stopper. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to configure the device of Willis with a non-medicinal substance between the first stopper and the second stopper, because Applicant has not disclosed that having a non-medicinal substance between the first stopper and the second stopper provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either locations of the non-medicinal substance because they are both provided the same purpose of providing medications to a patient. Therefore, it would have been an obvious matter of design choice to modify the Willis device to obtain the invention as specified in claim 34 and 35.

Response to Arguments

6. Applicant's arguments filed 2/18/05 have been fully considered but they are not persuasive. The statement of intended use carries no patentable weight, since the limitation is not positive recited in the claims. Furthermore, the Willis' device and the Ennis's device in view of the Willis' device are capable of spraying medication suitable for inhalation by a patient.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

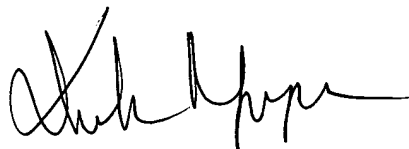
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q. Nguyen whose telephone number is 571-272-4907. The examiner can normally be reached on Monday-Thursday 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Dinh Q Nguyen', with a stylized, flowing script.

Dinh Q Nguyen
Primary Examiner
Art Unit 3752

dqn